



March 22, 2001

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 14030
Austin, Texas 78714-9030

OR2001-1131

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145202.

The Texas Department of Human Services (the “department”) received a written request from an attorney for all records pertaining to an alleged overpayment of Medicaid and Food Stamps to the requestor’s client. You contend that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹

Based on the information before us, it appears that you did not request an attorney general decision raising section 552.108 within ten business days of the department’s receipt of the records request. *See* Gov’t Code § 552.301. This failure results in the presumption that the requested documents are public. *See* Gov’t Code § 552.302. However, in Open Records Decision No. 586 (1991), this office concluded that the need of a law enforcement agency, other than the one that received the written request, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. You contend that the Hidalgo County District Attorney (the “district attorney”) has a compelling section 552.108 interest in having the requested documents withheld. Therefore, we shall address your argument raised under section 552.108 of the Government Code.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime .

¹We note that the submitted documents include a subpoena duces tecum for the same records at issue here. This ruling does not affect the department’s responsibility to respond to or comply with the subpoena. The appropriate forum to determine whether the information must be released pursuant to the subpoena is the authority that issued the subpoena.

... if ... release of the information would interfere with the detection, investigation, or prosecution of crime.” The district attorney has asked you to deny the current request on the basis of section 552.108. In a letter submitted to this office, the district attorney states that the release of the documents at issue would interfere with the prosecution of a pending criminal case. Based upon this representation, we conclude that the release of most of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, some of the documents at issue are specifically made public under section 552.022 of the Government Code. Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

....

(17) information that is also contained in a public court record.

After reviewing the information at issue, we conclude several of the submitted documents constitute “information in an account” or “information that is also contained in a public court record.” Accordingly, the department must release to the requestor the documents we have identified. However, the department may withhold the remaining documents pursuant to section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

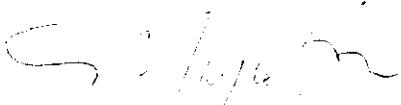
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/seg

Ref: ID# 145202

Encl. Submitted documents

cc: Ms. Reneé Treviño
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(w/o enclosures)